

Assembly Bill No. 1928

CHAPTER 244

An act to amend Section 13557 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 23, 2010. Filed with
Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1928, Torlakson. Vehicles: commercial driver's license: suspension or revocation.

(1) Existing law requires the Department of Motor Vehicles, in the review of a determination that requires the department to immediately suspend the privilege of a person to operate a motor vehicle for any one of specified reasons, to sustain the order of suspension or revocation, or if the person is under 21 years of age and does not yet have a driver's license, to delay issuance of that license for one year if it determines, by the preponderance of the evidence, all of specified facts, including, that the person was driving a motor vehicle with a certain amount of alcohol in his or her blood under any one of 3 specified circumstances. A violation of the Vehicle Code is a crime.

This bill would add to those specified circumstances (1) the person was driving a vehicle that requires a commercial driver's license and the person had 0.04% or more, by weight, of alcohol in his or her blood, or (2) the person was on probation for a violation of certain driving under the influence of alcohol or drug offenses and had a blood-alcohol concentration of 0.01% or more, by weight, of alcohol in his or her blood, as measured by a preliminary alcohol screening test or other chemical test. By expanding the definition of a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 13557 of the Vehicle Code is amended to read:

13557. (a) The department shall review the determination made pursuant to Section 13353, 13353.1, or 13353.2 relating to any person who has received a notice of an order of suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13353, 13353.1, 13353.2, 23612, or 13382. The department shall consider the sworn report

submitted by the peace officer pursuant to Section 23612 or 13380 and any other evidence accompanying the report.

(b) (1) If the department determines in the review of a determination made under Section 13353 or 13353.1, by a preponderance of the evidence, all of the following facts, the department shall sustain the order of suspension or revocation:

(A) That the peace officer had reasonable cause to believe that the person had been driving a motor vehicle in violation of Section 23136, 23140, 23152, 23153, or 23154.

(B) That the person was placed under arrest or, if the alleged violation was of Section 23136, that the person was lawfully detained.

(C) That the person refused or failed to complete the chemical test or tests after being requested by a peace officer.

(D) That, except for the persons described in Section 23612 who are incapable of refusing, the person had been told that his or her privilege to operate a motor vehicle would be suspended or revoked if he or she refused to submit to, and complete, the required testing.

If the department determines, by a preponderance of the evidence, that any of those facts were not proven, the department shall rescind the order of suspension or revocation and, provided the person is otherwise eligible, return or reissue the person's driver's license pursuant to Section 13551. The determination of the department upon administrative review is final unless a hearing is requested pursuant to Section 13558.

(2) If the department determines in the review of a determination made under Section 13353.2, by the preponderance of the evidence, all of the following facts, the department shall sustain the order of suspension or revocation, or if the person is under 21 years of age and does not yet have a driver's license, the department shall delay issuance of that license for one year:

(A) That the peace officer had reasonable cause to believe that the person had been driving a motor vehicle in violation of Section 23136, 23140, 23152, 23153, or 23154.

(B) That the person was placed under arrest or, if the alleged violation was of Section 23136, that the person was lawfully detained.

(C) That the person was driving a motor vehicle under any of the following circumstances:

(i) When the person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(ii) When the person was under the age of 21 years and had 0.05 percent or more, by weight, of alcohol in his or her blood.

(iii) When the person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, or other chemical test.

(iv) When the person was driving a vehicle that requires a commercial driver's license and the person had 0.04 percent or more, by weight, of alcohol in his or her blood.

(v) When the person was on probation for a violation of Section 23152 or 23153 and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test.

If the department determines that any of those facts were not proven by the preponderance of the evidence, the department shall rescind the order of suspension or revocation and, provided that the person is otherwise eligible, return or reissue the person's driver's license pursuant to Section 13551. For persons under 21 years of age, the determination of the department pursuant to this paragraph is final unless a hearing is requested within 10 days of the determination, which hearing shall be conducted according to the provisions of Section 13558. For persons over 21 years of age, the determination of the department upon administrative review is final unless a hearing is requested pursuant to Section 13558.

(c) The department shall make the determination upon administrative review before the effective date of the order of suspension or revocation.

(d) The administrative review does not stay the suspension or revocation of a person's privilege to operate a motor vehicle. If the department is unable to make a determination on administrative review within the time limit in subdivision (c), the department shall stay the effective date of the order of suspension or revocation pending the determination and, if the person's driver's license has been taken by the peace officer pursuant to Section 13388, 13389, 23612, or 13382, the department shall notify the person before the expiration date of the temporary permit issued pursuant to Section 13388, 13389, 23612, or 13382, or the expiration date of any previous extension issued pursuant to this subdivision, in a form that permits the person to establish to any peace officer that his or her privilege to operate a motor vehicle is not suspended or revoked.

(e) A person may request and be granted a hearing pursuant to Section 13558 without first receiving the results of an administrative review pursuant to this section. After receiving a request for a hearing, the department is not required to conduct an administrative review of the same matter pursuant to this section.

(f) A determination of facts by the department under this section has no collateral estoppel effect on a subsequent criminal prosecution and does not preclude litigation of those same facts in the criminal proceeding.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.